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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,255	05/01/2006	Jorgen Glaesel	2081-0134PUS1	2445
2292	7590	06/24/2009	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				MCEVOY, THOMAS M
ART UNIT		PAPER NUMBER		
		3731		
NOTIFICATION DATE			DELIVERY MODE	
06/24/2009			ELECTRONIC	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/539,255	GLAESL, JORGEN
	<b>Examiner</b>	<b>Art Unit</b>
	THOMAS MCEVOY	3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 16 June 2005.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-17 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 6/16/2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/16/2005</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Drawings***

1. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the lines, numbers, figures and letters are not uniform, clean and well defined (of a generally poor quality) (37 CFR 1.84(l)). Applicant is advised to employ the services of a competent patent draftsperson outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 9 recites the limitation "the lowermost part" in line 2. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-6, 9-12 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Browne (US 549,895).

Regarding claim 1, Browne discloses a tool capable of removing ticks and other like parasites from the skin (a tack shank can be comparable in size to a tick), which tool has an engagement part ( $a/a'/a^2$ ) with a bottom face and a top face (Figure 4), wherein a V-shaped groove (Figure 3) is provided that has side faces (Figure 2) between the bottom face and the top face at an edge (Figure 4; perpendicular to concave side faces) of the engagement part, which side edges converge towards each other from an outer opening at the edge towards an internal assembly point  $a_2$ , said V-shaped groove being wider at the top face of the engagement part than it is at the underside (Figure 4), characterised in that a considerable portion of each side face of the V-shaped groove between the underside and the top face of the engagement part is constituted by a concave engagement face (Figure 4). Regarding claim 2, a lowermost part of the concave engagement face is essentially in parallel with the bottom face (Figure 4). Regarding claims 3-5, the concave face can be regarded in the claimed manners. Regarding claim 6, each side face comprises a lowermost part (Figure 4; wall between side face and bottom face) that extends essentially perpendicularly from the bottom face and is connected to the concave engagement face. Regarding claim 9, an innermost part of the lowermost part of the side face is provided with parallel side faces (Figure 4). Regarding claim 10, at the bottom of the V-shaped groove, at  $a^2$  of Figure 2, what can be regarded as a cutter blade is provided in level with the bottom face (see

line 88). Regarding claim 11, the tool comprises a holder part C' provided with an upwardly protruding transverse beam B for supporting a thumb. Regarding claim 12, the tool comprises a holder part C' provided with an indentation (at C', Figure 1) for supporting a thumb. Regarding claim 14, a/a'/a2 forms a recess that can support a finger. Regarding claim 15, part C of the tool is plate shaped. Regarding claim 16, at least one recess is provided in the area between the engagement part and the holder part (lines 77-83).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 1-9, 11, 12, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benitez et al. (US 2003/0141492) in view of Browne (US 549,895).

Regarding claim 1, Benitez et al. disclose a tool capable of removing ticks and other like parasites from the skin (some nail shanks are comparable in size to ticks; the tool converges to sharpened points 36 – Abstract), which tool has an engagement part 30 with a bottom face and a top face (Figure 2), wherein a V-shaped groove 30/34 is provided that has side faces 34 between the bottom face and the top face at an edge 28 of the engagement part, which side edges converge towards each other from an outer opening at the edge towards an internal assembly point (Figure 4), said V-shaped groove being wider at the top face of the engagement part than it is at the underside (Figure 4). It is unclear whether a considerable portion of each side face of the V-shaped groove between the underside and the top face of the engagement part is constituted by a concave engagement face (Figure 4) because Benitez et al. only suggest that the side faces should form a concave recess (paragraph 0034). Browne teaches (as described above) that the side faces of a tack puller (or nail puller) can form a concave recess by providing the side faces with a concave shape (Figure 4). It would have been obvious to one of ordinary skill in the art in view of Browne to have constructed the side faces with a concave shape because Benitez et al. suggest a concave recess and Browne teaches how a concave recess can be formed for a similar device. Regarding claim 2, a lowermost part of the concave engagement face would be essentially in parallel with the bottom face as modified in view of Browne. Regarding claims 3-5, the concave face can be regarded in the claimed manners. Regarding claim 6, each side face comprises a lowermost part that extends essentially perpendicularly from the bottom face and is connected to the concave engagement face (at 30, Figure

2). Regarding claim 7, at least for a distance, the lowermost part of the side face is increasing in height, seen from the edge to the assembly point (Figure 2). Regarding claim 8, the lowermost part of the side face has a constant low height for some distance from the edge into the V-shaped groove (at 36 or 38). Regarding claim 9, an innermost part of the lowermost part of the side face is provided with parallel side faces (as modified in view of Browne; see Figure 4 of Browne; the side faces of the lowermost part can be regarded as the upper and lower faces of the lowermost part). Regarding claim 11, the tool comprises a holder part provided with an upwardly protruding transverse beam for supporting a thumb (Figure 1). Regarding claim 12, the tool comprises a holder part 14 provided with an indentation capable of supporting a thumb. Regarding claim 14, the tool edge forms a recess 18 that can support a finger (Figure 2).

2). Regarding claim 16, at least one recess 14 is provided in the area between the engagement part and the holder part (Figure 1).

9. Claims 13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Browne (US 549,895).

Regarding claim 13, Browne discloses the device as described above but fails to disclose ribs on the handle. However, it is well-known in the art to provide ribs on the handles hand tools to provide gripping support. It would therefore have been obvious to one of ordinary skill in the art to have provided a ribbed area on the handle of Browne to provide gripping support. Regarding claim 17, Browne fails to disclose that the overall length (or the largest outer dimension) corresponds essentially to the dimensions of a credit card (3-4 inches). However, it is well-known in the art that small, hand-held

prying instruments of this nature can have overall lengths of 3-4 inches (see References Cited). It would therefore have been obvious to one of ordinary skill in the art to have constructed the device with this overall length as an obvious matter of design choice.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas McEvoy whose telephone number is (571) 270-5034. The examiner can normally be reached on M-F, 9:00-6:00.  
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Thomas McEvoy/  
Examiner, Art Unit 3731

/Anhtuan T. Nguyen/  
Supervisory Patent Examiner, Art Unit 3731, 6/18/09